

5

Send on 20 June 1973
18 June 1973

Aleks KURGVEL

To THE IMMEDIATE SUPERVISOR

Subject - Request for LEGAL ADVICE and help in my dispute with the NEW YORK STATE TAX AUTHORITIES concerning the taxes from my earnings in Washington. D.C. during the years 1952, 1953, 1954 and 1955.

References -

- 1) the letter of the N.Y. State Tax Commission's Hearing officer Mr. Paul B. COBURN dated 05 March 1973. and
- 2) the DECISION of the N.Y. State Tax Commission made in Albany on 05 Mar 1973, the copies of both documents being here attached.

These documents show the present stand of the dispute: I have either to file a claim against the a/m Decision with the Supreme Court of the New York State prior to 04 July 1967, or I have to pay the assessed taxes and interests, all together approximately \$ 1,140.

I am sick and tired of this dispute which has now been dragging for nearly eight years. It has taken much of my energy and time and a lot of money to the legal advisors of past, from whom I have had no practical help. I am still convinced that the justice is on my side, but I am not sure that some unknown to me legal technicality might be against me. Also, if going to court, there some questions might be asked regarding the character of my work and my connections with the attorney, Mr. John F.B. MITCHELL, to whom I was advised to turn for help by my supervisor in 1965/66.

In the light of the aforesaid I would be thankful if quick and competent legal advice and help could be given to me in the following questions:

- 1) Provided that I pay the assessed taxes and interests from the earnings of 1962-65, will this then be all, or will the NEW YORK Tax authorities then have the possibility and the precedence to start new tax claims against me for the years from 1966 up until to the end of my service in Washington? They have not done this yet.
- 2) What is the statute of limitation of such cases - 3 years, 6 years or unlimited?
- 3) Will the City of New York become automatically also the right for taxation of those my Washington earnings?
- 4) How much, approximately, would it cost on different fees when going to Court even if I would not take a lawyer to represent me, and when winning or losing the case?
- 5) In case that our lawyers will find it advisable for me to go to court, would the Employer give me some proof that my job and I myself were transferred from Germany in February 1953 directly to Washington, D.C. without establishing the domicile in New York, and could I be given some help as to the formalities of filing the suit.

Attached. Letters mentioned above, and info on 10 more sheets.

Respectfully yours,

Is this allowed, or must I have a lawyer to represent me?

Alleged was received originally through KURGVEL
They don't know
He doesn't know
He can't hear
are not high but
the addresses
should have been
if they find that
I don't have a post
card
if I need to
to have a lawyer or
they should refer me
to see in view of
year in court
that I can't do
more

DECLASSIFIED AND RELEASED BY
CENTRAL INTELLIGENCE AGENCY
SOURCE METHOD EXEMPTION 3B2D
NAZI WAR CRIMES DISCLOSURE ACT
DATE 2008

DEFINITIONS

1. According to the official "NEW YORKS STATE TAX FORMS AND INSTRUCTIONS FOR FILING," issued in Resident Packets as well as in Nonresident Packets for the years 1962 through 1965, is said -

"A RESIDENT is a person who (a) is domiciled in the State of New York or (b), even though domiciled outside New York State, maintains a permanent place of abode within the State and spends a total of more than 183 days of the taxable year within the State...."

"A NONRESIDENT is any person not coming within the definition of a resident or who, though domiciled in New York, fulfills all three of the following conditions:

- (1) He did not maintain a permanent place of abode in New York during the taxable year,
- (2) did maintain a permanent place of abode outside New York during the entire taxable year and
- (3) spent more than thirty days in New York during the taxable year.

"For the purpose of the above definitions, domicile in general, means the place which an individual intends to be his permanent home - the place to which he intends to return whenever he may be absent. A person can have only one domicile. ..."

- 2) According to the NEW YORK PERSONAL INCOME TAX LAW"

Sec. 605*** (a)*** A resident individual means an individual:

- (1) who is domiciled in the State, unless he maintains no permanent place of abode in this State, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this State, or
- (2) who is not domiciled in this State but maintains a permanent place of abode in this State and spends in the aggregate more than one hundred eighty-three days of the taxable year in this State. "

Sec. 605 (c) A permanent place of abode means a dwelling place permanently maintained by the taxpayer, whether or not owned by him, and will generally include a dwelling place owned or leased by his or her spouse;

(6)

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
STATE TAX COMMISSION

-----X
In the Matter of the Petition :

of :

ALEKS & SALME KURGVEL :

for a Redetermination of a Deficiency :
or for Refund of Personal Income :
Taxes under Article 22 of the Tax :
Law for the Years 1963, 1963, 1964 and :
1965 '2 :

-----X
A P P E A R A N C E S :

FOR THE STATE TAX COMMISSION: PAUL D. CORBURN,
Hearing Officer

FOR THE INCOME TAX BUREAU: SAUL HECKELMAN, ESQ.,
Director of Law Bureau,
Building 9, Room 214A,
Albany, N.Y. 12227
BY: FRANCIS X. ROYLAN, ESQ.,
of Counsel

FORMAL HEARING held at 80 Centre Street,
New York, New York, on December 14, 1972, at
10:15 a.m.

RAYVID REPORTING SERVICE

CERTIFIED STENOGRAPHIC REPORTERS

150 NASSAU STREET

NEW YORK, N. Y. 10038

3877
CORTLANDT 7-3878

APPEARANCES (Cont.)

PETITIONER:

ALEKS & SALME KURGVEL
3602 16th Street, N.W.,
Washington, D.C. 20010

MR. COBURN: This is a formal hearing in the matter of the petition of Aleks and Salme Kurgvel for a redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1962, 1963, 1964 and 1965.

Now, sir, this is the procedure that we follow in these cases.

The Income Tax Bureau first puts into evidence the jurisdictional papers in the case. This is done so we know what are the issues before us.

After that the petitioner may present such sworn testimony and such documentary evidence as he desires in support of his petition.

Any witness testifying is subject

RAYVID REPORTING SERVICE

150 NASSAU ST., NEW YORK, N. Y. 10038, CORTLANDT 7-3877

1
2 to cross-examination.

3 In connection with the presentation
4 of your case, I wish to remind you of two
5 factors.

6 First, the burden of proof is upon
7 the petitioner; second, at prior formal
8 or informal conferences or by mail you
9 may have submitted documentary materials
10 to the Income Tax Bureau.

11 If you wish those documentary
12 materials to be considered by the State
13 Tax Commission on this hearing you must
14 reintroduce them into evidence during
15 the course of the hearing.

16 At the conclusion of the taking
17 of testimony each side will have an oppor-
18 tunity to present such arguments as to
19 law and fact as they desire.

20 Would you proceed for the Bureau,
21 please, Mr. Boylan?

22 MR. BOYLAN: Yes. I offer the juris-
23 dictional papers, the petition sworn to
24 January 28, 1967, with attachments; the
25 notice of deficiency for the years 1962,

1
2 '63, '64, dated November 14, 1966, and a
3 statement of audit changes under the same
4 dates for those years, together with an
5 earlier statement of audit changes for
6 those years dated March 28, 1966.

7 MR. COBURN: Show them to the tax-
8 payer.

9 (Handed to Mr. Kurgvel.)

10 MR. BOYLAN: For the year 1965 I
11 offer a notice of deficiency dated December
12 19, 1966, and a statement of audit changes
13 for that year dated under the same date.

14 MR. COBURN: Show that to the tax-
15 payer, please.

16 (Handed to Mr. Kurgvel.)

17 MR. BOYLAN: I also offer the returns
18 for the years '62, '63, '64 and '65.

19 MR. COBURN: I just want you to look
20 at them, sir.

21 MR. KURGVEL: Well it wouldn't help
22 me much.

23 MR. COBURN: No. I have to mark
24 them into evidence. Will you hand them
25 to me, then, when you are finished looking

1 at them so I can mark them into evidence?

2 Department of Taxation and Finance
3 Exhibit A is a statement of audit changes
4 dated November 14, 1966, addressed to Aleks
5 and Salme Kurgvel.
6

7 (Document so marked.)

8 MR. COBURN: Department of Taxation
9 and Finance Exhibit B is a statement of
10 audit changes, dated March 28, 1966, ad-
11 dressed to Aleks and Salme Kurgvel.

12 (Document so marked.)

13 MR. COBURN: Department of Taxation
14 and Finance Exhibit C is a notice of de-
15 ficiency dated November 14, 1966, addressed
16 to Aleks and Salme Kurgvel.

17 (Document so marked.)

18 MR. COBURN: All of these documents
19 relate to the years 1962, 1963 and 1964.

20 Department of Taxation and Finance
21 Exhibit D is a statement of audit changes
22 dated December 19, 1966, addressed to
23 Aleks Kurgvel.

24 (Document so marked.)

25 MR. COBURN: Department of Taxation

2 and Finance Exhibit E is a notice of de-
3 ficiency dated December 19, 1966, addressed
4 to Aleks Kurgvel.

5 (Document so marked.)

6 MR. COBURN: The latter two documents
7 relate to the taxable year 1965.

8 Department of Taxation and Finance
9 Exhibit F is a petition for redetermina-
10 tion of deficiency or for refund of per-
11 sonal income tax for the years 1962, 1963,
12 1964 and 1965, sworn to by petitioner's
13 representative on January 28, 1967.

14 (Document so marked.)

15 MR. COBURN: Department of Taxation
16 and Finance Exhibit G is New York State
17 combined income tax return for the year
18 1962 for Salme and Aleks Kurgvel with a
19 withholding statement and a claim for resi-
20 dent tax credit attached thereto.

21 (Documents so marked.)

22 MR. COBURN: Department of Taxation
23 and Finance Exhibit H is New York State
24 income tax resident return for the year
25 1963 for Aleks and Salme L. Kurgvel.

1
2 MR. KURGVEL: "E." Salme, "E."

3 MR. COBURN: Sir, I am just reciting
4 what's on the document.

5 MR. KURGVEL: I see.

6 MR. COBURN: It is not important.

7 MR. KURGVEL: Yes.

8 MR. COBURN: And attached thereto
9 is a withholding tax statement, a voucher
10 for income tax refund and a claim for resi-
11 dent tax credit.

12 (Document so marked.)

13 MR. COBURN: Department of Taxation
14 and Finance Exhibit I is New York State
15 income tax resident return for the year
16 1964 for Aleks and Salme E. Kurgvel, and
17 attached thereto is a withholding state-
18 ment, several schedules and a claim for
19 resident tax credit.

20 (Document so marked.)

21 MR. COBURN: Department of Taxation and
22 Finance Exhibit J is New York State combined
23 income tax return for the year 1965 for
24 Aleks and Salme E. Kurgvel and attached
25 thereto is a withholding statement, a

1
2 copy of a 1965 Washington, D. C. tax re-
3 turn, a letter and a claim for resident tax
4 credit.

5 (Documents so marked.)

6 MR. COBURN: Do you have any further
7 documents, Mr. Boylan?

8 MR. BOYLAN: No, I don't, Mr. Coburn.

9 A L E K S K U R G V E L , called as a wit-
10 ness, having been first duly sworn by the
11 Hearing Officer, was examined and testified
12 as follows:

13 MR. COBURN: Keep your voice up.

14 And will you give your name and ad-
15 dress to the Hearing Reporter, please?

16 THE WITNESS: Aleks Kurgvel, address
17 3602 16th Street Northwest, Washington,
18 D. C. 20010.

19 MR. COBURN: Now, sir, in examining
20 the various documents, I gather it's your
21 contention that you were domiciled in
22 Washington, D. C. in the years in ques-
23 tion?

24 THE WITNESS: Yes, sir.

25 MR. COBURN: And it is, therefore,

1
2 your contentic also that you are entitled
3 to the resident tax credit for those years?

4 THE WITNESS: Notⁿ resident tax credit.

5 As to my understanding I have not -- well,
6 I do not need to pay any taxes in New York
7 State, because I have had no income here.

8 Also, you might find some controller's leafs,
9 what I said now, because on one of the first
10 hearings I agreed to pay some taxes but
11 under protest, and only for the purpose
12 of getting that burden off of me.

13 Also, I did not find that I was
14 really compelled to pay it.

15 MR. COBURN: I see. Then you take
16 the position, sir, you are not a resident
17 for the years in question?

18 THE WITNESS: That's correct.

19 MR. COBURN: That you earned no in-
20 come in New York?

21 THE WITNESS: That's right.

22 MR. COBURN: And, therefore, you
23 don't have to pay any tax to the Bureau?

24 THE WITNESS: Right. But as I said,
25 to have the burden off my shoulders, and

at that time I didn't take more than a couple of hundred, and on the advice of my attorney at that time I agreed to pay it.

MR. COBURN: Okay. Sir, will you proceed with your testimony?

THE WITNESS: Yes. If you don't mind, I will give you a short run as of my being in the United States.

I came to the United States in February 1953. I was employed by the Government, U. S. Government, in Europe already.

I was brought here and the job was waiting for me in Washington, D.C.

Also, my wife and our younger son had arrived in the United States earlier, they settled down in New York, she was working here, the boy was still going to school.

They had just one-room apartment when I arrived and there was no -- well, no wish nor any possibilities for me to stay with them in New York because my job was foreseen, which I had agreed to take it in Washington, D.C. and there I have been

1
2 working since then up to today.

3 It is true that in 1964 -- no,
4 pardon me, '63, we bought the house
5 in Elmhurst, New York. It's a small
6 house with two apartments, one apart-
7 ment has two bedrooms, one has one bed-
8 room, and the reason was that I wanted
9 to have my family, my wife and my son
10 a little better living conditions as
11 they had before in one bedroom because
12 the young man was at that time already
13 finishing the high school and they
14 couldn't be living in one bedroom.

15 Also, that house had a second
16 apartment which we rented out to earn
17 some income. That was the only purpose
18 why when we bought that house, that did
19 not change anything in my status as to my
20 domicile or work, I still remained in
21 Washington, D. C., where I still am.

22 There has been -- well, maintained by
23 the tax authorities that it still was my
24 domicile and as if I had intention to stay
25 there for later. That's never been proved

1
2 nor have I said at any time. Also, we
3 have bought two years ago now an extra
4 house, a second house in Lakewood, New
5 Jersey. By the way, I am Estonian
6 refugee from the Communist and in Lake-
7 wood there are many Estonians living there.
8 We want to resettle after we will be going
9 off our jobs. My wife is working for the
10 First National City Bank here. I with
11 the Government in Washington, D. C.
12 There the retirement will probably be
13 in 1974 and even when I will reach seventy
14 and my wife sixty-five.

15 So my honest feeling is that I have
16 never been resident or domiciled in New
17 York, always have been in Washington,
18 D. C.

19 I made, of course, one stupid error,
20 I became citizen -- what was it in --
21 in '58, and the following elections for
22 the President, Presidential elections, I
23 voted in New York.

24 I was not aware that that has any-
25 thing to do with the taxes. Of course,

Kirgvel

13

that was a stupid ^{idea} -- of mine, but I committed that.

MR. COBURN: When did you vote, in what years?

THE WITNESS: That was in --

MR. COBURN: '62?

THE WITNESS: '62, yes.

Unfortunately, in one of my statements --

MR. BOYLAN: '60 there was a Presidential election.

THE WITNESS: Oh, Presidential election.

MR. COBURN: Did you vote in the following Presidential election in '64?

THE WITNESS: No. I vote just one time as I recollect. I had never voted here for the Governor or the Senators because living in Washington I really don't know much about the Senators. Of course, I know the Governor, what everybody knows, but at that time I at least didn't know anything.

And, as I mentioned already, that the agreement which we reached with Mr.

2 Hertzendorf at the first hearing, it was
3 just to get the burden off me.

4 MR. COBURN: Sir, anything that hap-
5 pened at the preliminary hearing is not
6 before me today. This is a new hearing
7 at which time the State Tax Commission
8 will consider all of the facts anew.

9 The fact that you may have offered
10 a proposed settlement which was rejected
11 by the Bureau in no way affects the action
12 that the State Tax Commission will take
13 in this proceeding. And any such settle-
14 ment discussions or offers will not be
15 considered by the State Tax Commission on
16 this hearing.

17 THE WITNESS: Well, I don't know whether
18 it's necessary to add something about the
19 meaning of me being domiciled in Washington,
20 D. C. or not.

21 MR. COBURN: Sir, at this point, what
22 I am interested in determining are the
23 facts. If the conclusion -- at the con-
24 clusion of the hearing after Mr. Boylan
25 cross-examines you, then you will have an

1
2 opportunity to make such argument that
3 you wish.

4 Have you finished with the facts
5 that you want to present at this time?

6 THE WITNESS: Yes, sir.

7 MR. COBURN: Okay. Will you cross-
8 examine, please, Mr. Boylan?

9 MR. BOYLAN: May I have the papers?

10 (Handed to Mr. Boylan.)

11 CROSS-EXAMINATION

12 BY MR. BOYLAN:

13 Q Mr. Kurgvel, you filed a petition on
14 January 28, 1967.

15 A '67?

16 Q That's a fact. And that was occa-
17 sioned by the disallowance of the credit for
18 the District of Columbia tax, this assessment.

19 Now, you had originally filed a re-
20 turn as a non-resident and then your tax was
21 restated as a resident and you paid that; is
22 that right?

23 A Something like that, yes.

24 Q Now, you say you paid it under
25 protest. Did you ever file any application

1
2 for a refund other than your petition?

3 A With the New York State, you mean?

4 Q Yes.

5 A No, I did not. Because I was not aware
6 that that was ever necessary. I have written
7 a lot of letters where I tried to explain the
8 case. Because I thought it was just all
9 based on a misunderstanding about the domicile,
10 question of domicile.

11 Q Well, you did write a letter stating
12 that you were paying it under protest. Do you
13 want to offer that, Mr. Kurgvel?

14 A Yes, sir.

15 MR. COBURN: Petitioner's Exhibit
16 1 is a copy of a letter dated March 25,
17 1966, addressed to John F. B. Mitchell
18 from Aleks Kurgvel.

19 (Document so marked.)

20 Q Now, how long have you had this
21 job in Washington?

22 A I have that job since the 26th of Feb-
23 ruary, the date I arrived, 1953, up to today.

24 Q The date you arrived in the country?

25 A That's right, because that was already --

1
2
3 MR. COBURN: Sir, just answer the
4 questions that he asks, when he's finished
5 cross-examining you, if you want to
6 elaborate on any of the testimony, you
7 will have an opportunity but I think it
8 is best for you, and also to make a
9 clear record to just answer the questions
10 that Mr. Boylan asks.

11 THE WITNESS: Yes, sir.

12 Q When did you marry Salme?

13 A I married Salme in Estonia in 1928.

14 Q When you first came where was Salme
15 living in 1953?

16 A In New York, Long Island City.

17 Q And she had an apartment there?

18 A She had a one-room apartment there. One-
19 bedroom apartment.

20 Q And did you immediately go to Washing-
21 ton?

22 A What?

23 Q Did you immediately go to Washington
24 in 1953?

25 A No. I was received -- I was received by
an officer of my future working place in New York,

1
2 which was the port of entry for me, and I was
3 allowed to stay over the weekend with my family.

4 Q You mean you had an escort down to
5 Washington?

6 A No escort.

7 Q From your employer?

8 A Pardon?

9 Q You were met by someone?

10 A I was met because I didn't know anything
11 here.

12 Q Whom do you work for in Washington?

13 A For the U. S. Government, Department of the
14 Army.

15 Q The Army?

16 A Yes.

17 Q Someone from the Army met you at the
18 pier; is that what you are saying?

19 A Well, at the -- not pier. I came by plane.

20 Q At the air field?

21 A At the airport.

22 Q Met you at the air field?

23 A At the air field, yes.

24 Q And then you only spent the weekend
25 in New York?

2 A That's right.

3 Q And then you went to Washington?

4 A Washington, D. C.

5 Q And that week you got some accommo-
6 dations from Washington?

7 A Yes, I was in the hotel the first few
8 days and then I got accommodations.

9 Q And I understand you have a fur-
10 nished room in Washington?

11 A That's right, yes.

12 Q No cooking facilities?

13 A Oh, yes, there is cooking facilities.

14 Q You have a one-room apartment? A
15 one-room apartment?..

16 A I didn't get you.

17 Q Would you describe the accommoda-
18 tions you have in Washington in terms of --

19 A Sir, it is --

20 MR. COBURN: Sir, let him finish
21 asking the question before you answer be-
22 cause the reporter can't take both at the
23 same time.

24 Finish.

25 Q -- in the ordinary terms that you

1
2 described, is it a one-room apartment, two-room
3 apartment, furnished room, you know about these?

4 A I have a furnished room with cooking
5 facilities. Or, more exactly, with the permis-
6 sion to use the kitchen.

7 Q A separate kitchen?

8 A No, no separate kitchen.

9 Q The kitchen isn't in your furnished
10 room, is it?

11 A No, sir.

12 Q Well, then, it's separate, isn't it?

13 A Separate of my room, yes.

14 Q You don't have your own bath?

15 A No.

16 Q Now, the house in Queens is owned by
17 your wife and you jointly?

18 A I didn't get you.

19 Q How do you have title to the house
20 in Queens?

21 A Title?

22 Q Yes.

23 A For -- you mean for the --

24 Q Who owns it?

25 A -- apartment?

- 1
- 2 Q Who owns the house?
- 3 A The house? We both together.
- 4 Q In both names?
- 5 A In both names.
- 6 Q This is a two-family house, isn't it?
- 7 A Yes, sir.
- 8 Q And how many rooms are there in each
- 9 floor?
- 10 A In upper floor there is living room, two
- 11 bedrooms and kitchen.
- 12 Downstairs, living room, one bedroom and
- 13 kitchen.
- 14 Q You have the one floor rented out?
- 15 A Yes, sir.
- 16 Q Which floor?
- 17 A The smaller apartment.
- 18 Q Downstairs?
- 19 A Downstairs.
- 20 Q Did you have children when you ar-
- 21 rived in this country?
- 22 A Yes, sir.
- 23 Q Two sons?
- 24 A Two sons, yes.
- 25 Q They were both small in 1953?

1
2 A No, one was already a student. They were
3 not small but the younger was still with the
4 mother, living with the mother.

5 MR. COBURN: How old were they?

6 Q Give us the dates of birth.

7 A Oh, I must consult my --

8 Q It's easier to know the dates of birth
9 than how old they were.

10 A The older son born in '31, that means in
11 '50 --

12 Q All right. Just he was born in 1931?

13 A Yes.

14 Q And the other one?

15 A The other one? 1939.

16 Q Now, in these years as of 1962, were
17 both boys living with your wife where she was?

18 A No.

19 Q When did you get the house in Queens?

20 A In '63.

21 Q '63. Now, in '62 both boys weren't
22 living with her?

23 A No.

24 Q One was?

25 A One was.

1
2 Q And the other boy was away at
3 school?

4 A That's right.

5 Q When he was not at school did he
6 come home there?

7 A Yes, sir.

8 Q Except that he was away at boarding
9 school, was it?

10 A No, he wasn't.

11 Q Well, you tell me.

12 A He was going to Brooklyn Tech.

13 Q But he wasn't living at home?

14 A He was. All the time.

15 MR. COBURN: Let me just see. In
16 1962 the older boy was going to college?

17 THE WITNESS: The older boy was go-
18 ing to college, yes.

19 MR. COBURN: Where was he going to
20 college?

21 THE WITNESS: In Clemson, South
22 Carolina.

23 MR. COBURN: The older boy?

24 THE WITNESS: Yes.

25 MR. COBURN: And he lived in South

Carolina?

THE WITNESS: That's right, yes.

MR. COBURN: In the same year the younger boy was going to Brooklyn Tech and living at home?

THE WITNESS: That's right.

MR. COBURN: And living at home?

THE WITNESS: That's right.

BY MR. BOYLAN:

Q When the younger boy was on vacation from the college in South Carolina, he would come home, would he not?

A Yes, sir.

Q And what was the situation as to the presence of the boys in the other three years, '63, '64 and '65?

A The situation? The older son, as soon as he got his Master's degree in Clemson, was called to the Army, and since then he is in the Army, by now a Lieutenant Colonel. The younger son --

Q Starting when did he go in the Army? Well, after he was graduated from college?

1
2 A That's right. He was just graduated in
3 that year, he got his Master's degree, but I
4 don't remember the year. It's sixteen years
5 ago.

6 Q Wouldn't it seem that he would have
7 a Master's degree during these years?

8 A Oh, yes, he got his Master's directly
9 after he got his Bachelor's degree he made
10 his Master's also.

11 Q In what year?

12 A Some sixteen years ago, because he has
13 been in the Army now for sixteen years.

14 Q All right.

15 This is somewhat confusing since
16 sixteen years ago refers back to 1956.

17 In 1962 you have him in school in
18 South Carolina. Was that his freshman year?

19 A May I ask for your honesty that I
20 don't know those years, I am not prepared to
21 answer, because I didn't know that will come
22 under discussion at all.

23 Q Well, I just want to -- what I was
24 getting at, I didn't know it would lead to such
25 difficulty either, I just want to know who was

1
2 living in the house in Queens during these
3 years.

4 A In the house in Queens was living my wife
5 and our younger son, whose first name is Rein.

6 Q And your eldest son, when he wasn't
7 otherwise engaged, would come home?

8 A He was always otherwise engaged. As
9 soon as he came from the college he was called
10 into the Army.

11 Q Yes. Once he was in the Army he
12 was otherwise engaged, but earlier he was in
13 school?

14 A Yes.

15 Q And you don't know when he went
16 into the Army?

17 A He came to United States in 1951. He
18 had his four years in Clemson , that makes
19 '55. One year approximately for Master's
20 makes it '56.

21 MR. COBURN: And then he went into
22 the Army where he still is?

23 THE WITNESS: Yes, then we had in '56 he
24 got his Master's and already, since his
25 address was given New York, his mother's

1
2 address, but he had his call in papers waiting
3 for him in New York.

4 Q I don't want to confuse this further,
5 but did he come to this country before you did?

6 A Yes, sir.

7 MR. COBURN: I believe --

8 MR. BOYLAN: I see.

9 MR. COBURN: I believe he testified
10 to that.

11 Q Did you come home to Queens to the
12 house in Queens on weekends during these years?

13 A I have been, yes, sir. As much as possible.

14 MR. BOYLAN: I have no further ques-
15 tions.

16 MR. COBURN: All right. Do you
17 have any other factual testimony you
18 wish to give?

19 THE WITNESS: Well, concerning
20 this, my family's coming to the United
21 States. The case is really strange
22 case, we came in three shifts. First
23 came our older son, Jaan, as a student.
24 He got a scholarship, he was a student
25 already in Germany.

1
2 Then came my wife and our younger
3 son in 1952.

4 I, however, was postponed because
5 I was a professional officer in the
6 Estonian Army, the Communists wanted me,
7 I refused to go with them, I reported that
8 to the Immigration Authorities and I
9 was ^{held} hauled back from Immigration to United
10 States until my employer cleared the
11 case and I was brought here in 1953.

12 MR. COBURN: I just have one or
13 two questions, sir.

14 During the years in question, did
15 you have a driver's license?

16 THE WITNESS: Yes, sir. That's
17 right.

18 MR. COBURN: And where was that
19 driver's license from?

20 THE WITNESS: That driver's license
21 was from New York State.

22 Again, if you allow me to explain
23 what happened.

24 MR. COBURN: Go ahead.

25 THE WITNESS: When my -- I was living

1. in Washington, I applied three times there
2. for driver's license, I always failed on
3. their road test. So, I got the yearly leave,
4. came to New York, went to driver's school
5. here and asked that I would like to have
6. a driver's license, I failed there. I
7. said, "All right, let's try it here," and
8. I got the license on the first trial.
9.

10. Again, I did not know at that time
11. that that had anything to do with being
12. domiciled here or not.

13. MR. COBURN: Did you own a car during
14. those years?

15. THE WITNESS: Not during those years.

16. MR. COBURN: Just answer it.

17. Did you have a will during those
18. years?

19. THE WITNESS: Pardon?

20. MR. COBURN: A will.

21. THE WITNESS: Yes.

22. MR. COBURN: And where was that will
23. prepared?

24. THE WITNESS: In Washington, D.C.

25. MR. COBURN: And did your wife have

1
2 a will?

3 THE WITNESS: No, she hasn't.

4 MR. COBURN: Now, do you have a copy
5 of that will?

6 THE WITNESS: I don't know whether
7 I have it with me. I am afraid I don't.

8 MR. COBURN: All right, sir. I
9 will give you thirty days from the date
10 of this hearing to forward to me in
11 Albany a photocopy of that will, if you
12 have it.

13 THE WITNESS: How many days?

14 MR. COBURN: Thirty days from the
15 date of the hearing.

16 We have now reached the stage in
17 the proceedings where each side has an
18 opportunity to present such argument
19 as to law and fact as they desire.

20 THE WITNESS: May I correct, sir,
21 one question? I am not sure if I under-
22 stand you fully.

23 You asked whether I had a car
24 during those years. Well, at that time
25 when I got the driver's license I was in

1
2 need of it, was when I did not have the
3 car. Later, when my older son was already
4 in the Army and he got his commission as
5 an officer, and was sent abroad, then he
6 wanted to give his old car to his younger
7 brother, but since he was so young then, we
8 agreed in the family that I will take then
9 legally the car for myself, and I paid \$1,
10 and that was registered here in New York
11 State on my name.

12 MR. COBURN: We have now reached the
13 stage in the proceedings where each side
14 has an opportunity to present such
15 argument as to law and fact as they desire.

16 Would you proceed for the Bureau,
17 please, Mr. Boylan?

18 MR. BOYLAN: When there are two
19 residences, the law requires in some context
20 that one of them be determined to be a
21 domicile.

22 All things being equal, the person
23 normally is free to elect which of the
24 two residences he regards as his domicile.

25 The question is different, however, when

1
2 the notion to be arrived at is to which
3 of two residences is truly a home when
4 there is a great deal of difference in
5 the quality of the two residences.

6 The question is not as simple to
7 arrive at what a petitioner or any person
8 recites as his domicile.

9 The question is which truly, despite
10 what he says out of the exigencies of the
11 moment, is to be considered, what everyone
12 considers to be a home and which is to
13 be considered the otherplace of residence.

14 In the case of a married man with
15 children, when the wife and matrimonial
16 bed and the children are in one place
17 and only the job is in another, with a
18 furnished room, without a bath or a
19 kitchen, it seems plain that the true home
20 is where the house is and where the wife
21 is and where the children are, and not where
22 the exigencies of making a living require
23 him to be during the week.

24 MR. COBURN: Thank you, Mr. Boylan.

25 Sir?

1
2 THE WITNESS: I understand that
3 that might be very right, what you said,
4 sir, in normal American conditions.

5 However, I am not a normal American.
6 I was very close to fifty when I came to
7 this country, my wife was over forty-five,
8 and you know the age of our children, we had
9 to start our life from the very scratch,
10 having nothing with us.

11 So, I was glad -- or first my wife
12 was glad to have a job in New York, even
13 before I arrived to the States.

14 I was glad I had a job waiting for
15 me in Washington, D. C.

16 Of course, we would have liked to
17 have lived together, to enjoy the family
18 life, but the circumstances were such that
19 we could not do that.

20 I asked my employer for help to have
21 my family brought over to Washington, D. C.
22 to settle there down altogether.

23 Unfortunately, they say they cannot
24 help in getting my wife a job there.

25 Then I tried figuring it out to make

1 that all on my own salary only. Already
2 our younger son, when he finished Brooklyn
3 Tech here, he applied for admission
4 to the Catholic University in Washington,
5 D. C., but when they refused, by my author-
6 ity they penalized my salary, then I have
7 to forfeit \$50 we paid for admission to
8 the university.
9

10 And he went here to Hunter College
11 for practically free. That was the
12 situation.

13 Now, while I have been living there
14 just in one room, having no extra bath
15 for myself and no kitchen for myself, be-
16 cause we wanted to start again, we didn't
17 want to become a burden to United States, but
18 to furnish our own life. That's why I tried
19 to get along with as little expenses as
20 possible.

21 And that's only what gave us the pos-
22 sibility to buy that house in New York, to
23 have at least my family living a little bet-
24 ter conditions.

25 Besides, I am not a man who just gets

1
2 a job and sees that he gets the money.

3 I am trying to do my job also.

4 So, it was fully enough for me
5 to have that one room when I had the oppor-
6 tunity to cook there.

7 I have scarcely been to any restaur-
8 ants in Washington, D.C., because that costs
9 money.

10 I have been just preparing my meals
11 myself and saving money like that. That's
12 the situation.

13 And also, I would have liked to be
14 here. I was not able to do that. And,
15 therefore, I find I had to be in Washington,
16 D. C. in the beginning, often six days a
17 week, not five days, to earn the money.

18 And for one day, there was no sense
19 to come over to New York, because that was
20 too expensive.

21 I stayed there in that one room,
22 if you excuse me, but I didn't enjoy the life,
23 but that was the way to get through.

24 MR. COBURN: Thank you, sir. The
25 hearing is concluded.

December 14, 1972

36

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Aleks Kurgvel	7	16		

E X H I B I T S

PAGE

Department of Taxation and Finance

Exhibit A in evidence

5

" B " "

5

" C " "

5

" D " "

5

" E " "

6

" F " "

6

" G " "

6

" H " "

7

" I " "

7

" J " "

8

Petitioner's Exhibit "1" in evidence

16

RAYVIG REPORTING SERVICE

150 NASSAU ST., NEW YORK, N. Y. 10038, CORTLANDT 7-3877